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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION, a state agency,

Plaintiff,

v.

AGUA CALIENTE BAND OF CAHUILLA INDIANS, and DOES I-XX

Defendants

Case No. 02AS04545

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH

HEARING DATE: December 20, 2002
TIME: 2:00 p.m.
DEPT: 53, Hon. Loren McMaster
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INTRODUCTION

By this civil enforcement action the California Fair Political Practices Commission (FPPC) seeks monetary penalties and injunctive relief under the Political Reform Act of 1974 (the Act), Government Code sections 81000 et seq., for past violations of the Act. The parties have stipulated that the defendant's motion to quash is deemed a response to the Second Amended Complaint and that this court's order shall be deemed an adjudication as to the Second Amended Complaint.

Under the Act, the defendant tribe is a "person" subject to regulation by the Act. The FPPC's duty to ensure the defendant tribe's compliance is no different from its duty to ensure compliance of all who engage in regulated transactions.

This is a case of first impression in California, although other states have enforced their campaign contribution laws against Indian tribes. The United States Supreme Court has not considered any case presenting the question whether the states have authority to enforce against Indian tribes laws protecting the integrity of state elections and legislative processes.

No case has determined that tribes have authority to interfere with impunity in states' rights of self-government, either as a matter of federal common law or by virtue of any federal statute. *No* case has held that tribes participate in state elections and legislative processes on a basis different from any other citizen or association.

The *only* cases curtailing state court civil jurisdiction over tribes for *off-reservation* conduct – *Kiowa* and *Redding Rancheria* – considered tribal transactions with private individuals. In each case tribal courts provided an alternate forum with jurisdiction to resolve the dispute. Neither case held or suggested that such immunity from suit, based on federal common law and statutes, would or could extend to tribal participation in state elections and legislative processes, power over which is reserved to the states by Article IV, § 4 of the United States Constitution through the 10th Amendment.

The states' interest in protecting the integrity of their state governments lies at the heart of representative government and is essential to independence of the states. The United States Supreme Court has held that congressional intent to interfere with these interests will not be inferred but must be "unmistakably clear." The tribe can show no such congressional intent and has cited no precedent holding or suggesting that tribes are free from enforcement of regulations protecting those interests and applicable equally to all who make contributions to influence State voters and elected officials.

Although other California tribes comply with the Act, the defendant tribe has not. The FPPC has no choice but to comply with the statutory mandate that it enforce the Act vigorously for the benefit of all of its citizens, including defendant's members. Cal. Const. Article III, section 3.5.

STATEMENT OF FACTS

The second amended complaint alleges that the defendant tribe, according to its own records, made contributions of more than one million dollars to California political candidates and committees from January 1, 1998 to June 30, 1998, making it a major donor committee under the Act (¶ 10). In the 1998 calendar year the tribe made contributions of more than $7,500,000 to statewide ballot initiatives (¶ 11). It contributed to more than 140 candidates for elective state office (¶ 11). From July 1, 1998 to December 31, 1998 the tribe made contributions totaling at least $6 million (¶ 21). The tribe made similar contributions in 2001 (¶ 12) and 2002 (¶ 13).

Notwithstanding its status as a major donor committee, the tribe failed to file full and timely disclosure reports required by the Act, thereby depriving voters of information necessary to make informed decisions. It did not file its report for the period January 1, 1998 to June 30, 1998 until October 2000, more than two years after the due date (¶ 19). The tribe filed an untimely report for the period July 1, 1998 through December 31, 1998 in March 1999 but only filed an amended final statement in November 2000, nearly two years after the due date (¶ 22).

More recently, in connection with the Proposition 51 ballot initiative, the tribe failed to disclose a contribution of $125,000 to the Yes on Proposition 51 Committee, using the Planning and Conservation League as an intermediary. If it had passed, Proposition 51 would have committed the expenditure of $15 million in public funds per fiscal year, for 8 years, for a rail line from Los Angeles to Palm Springs, including a train terminal at the tribe's Coachella Valley casino. (¶¶ 26-29).

In 1998 the tribe was one of the top 5 contributors to Yes on Proposition 5, Californians for Indian Self-Reliance, contributing more than $2,300,000 to the most expensive initiative campaign to that point in California history (¶ 37). The tribe entirely failed to disclose or only made untimely reports of several last-minute in-kind contributions to Yes on Proposition 5 totaling some $1 million (¶¶ 37-61). The complaint details additional undisclosed or late disclosures of contributions in the November 1998 general election, the March 2001 special election, the November 2001 general election, and the March 5, 2002 primary election to, respectively, Carl Washington for Assembly, the California State Democratic Central Committee, California Voter Registration 2002, the California Empowerment Project, and the California Republican Party (¶¶ 62-84).

The tribe's quarterly lobbyist employer reports, required by the Act, failed to identify the bills that were the subject of the tribe's lobbying efforts for any quarter of 2001 (¶¶ 85-98).

The Declarations of Alan Herndon, Chief Investigator for the Enforcement Division of the FPPC and Dan Schek, Investigator III of the FPPC, support finding that the tribe intends to influence California voters beyond its reservation borders on issues affecting all Californians. The exhibits attached to these declarations detail contributions exceeding ten million dollars to statewide propositions, political parties and state and local candidates (Herndon Dec. ¶ 10), including large contributions to approximately 90% of all incumbant legislators. (Schek Dec. ¶ 8, Ex. A). In 2001/2002 alone the tribe paid in excess of $250,000 to firms for the purposes

of lobbying. (Declaration of Mark Krausse ¶ 11). These declarations also show that it is not possible to know the true extent of such contributions or activity, unless the tribe complies with the Act's disclosure requirements. Nor can the FPPC accurately audit recipients' compliance. Certainly voters cannot make informed decisions, when reports are untimely or incomplete.

The Declarations of Karen Getman, Chairman of the FPPC; Bill Jones, Secretary of State; Bob Stern, former FPPC General Counsel and President of the Center for Governmental Studies; and Jim Knox, Executive Director of Common Cause and the attached exhibits support finding that California has a significant interest in protecting the integrity of its elections and legislative processes from the corrupting influence of significant campaign contributions and lobbying activities by special interests.

The declarations by officials from the states of Wisconsin (George Dunst, Legal Counsel for the Wisconsin State Elections Board), Connecticut (Jeffrey Garfield, Executive Director and General Counsel of the Connecticut Elections Enforcement Commission and Alan Plofsky, Executive Director and General Counsel of the Connecticut State Ethics Commission), and Minnesota (Jeanne Olson, Executive Director of the Minnesota Campaign Finance and Public Disclosure Board) show that there is no tradition of tribal immunity with respect to enforcement of laws analogous to the Act and that other states successfully enforce their laws, including in state court.

SUMMARY OF ARGUMENT

Put simply, the tribe cannot be fully eligible to participate in State elections and legislative activities and at the same time be immune from enforcement of State laws protecting the integrity of the very elections in which the tribe and its members may participate as voters, candidates, office holders, and lobbyist employers. The defendant tribe and its members, as full participants in the government they share

with all other citizens of California, are subject to the rules protecting all citizens from undue influence of money and from improper and corrupt practices.

The principles of Indian law protecting tribal rights of self-government do not apply here. Nor has the United States Supreme Court established "an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent." *California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 214-15 (1987). The courts have analyzed tribal claims of immunity from suit as a question of subject matter jurisdiction, not personal jurisdiction, and will go beyond the allegations of the complaint to consider evidence. Since the determination of sovereign immunity is made on a case-by-case basis, a finding of immunity in an unrelated action cannot collaterally estop the court from determining its jurisdiction over this enforcement action.

In ruling on defendant's motion to quash, the court should make the following determinations:

- The Act, by its terms, applies to the defendant.
- The tribe is not immune from regulation.
- The State's power to regulate includes the power to enforce.

The first determination is a pure question of state law. The second two raise questions of Indian law, which require analysis of federal, as well as state, precedent. In this case the latter two determinations also implicate 10th Amendment powers reserved to the States in a manner not addressed by any existing federal decision. The few state decisions find subject matter jurisdiction over tribes and tribal political committees.

To show that the state has power to regulate the tribal conduct at issue, this opposition cites authorities and offers supporting evidence to show:

(1) the subject matter of the Act deals with an area devoid of traditional tribal authority and affects no tribal sovereign interest;

(2) Congress has not preempted state authority in this area; and

(3) the 10th Amendment limits federal interference with sovereign state interests in protecting the integrity of state elections and legislative processes.

To show that the State's power to regulate includes the power to enforce the Act by state court action against the tribe, this opposition cites authorities and offers supporting evidence to show:

(1) neither *Kiowa* nor *Redding Rancheria* (nor any other precedent cited by defendants) is dispositive of the motion to quash;

(2) the State's sovereign interests cannot be protected without the ability to enforce the Act against the tribe on the same basis as it is enforced against all others whose conduct is subject to regulation by the Act, a power reserved to the State by the 10th Amendment.

I. DESPITE DEFENDANT'S UNIQUE STATUS, IT IS SUBJECT TO REGULATION OF ITS OFF-RESERVATION CONDUCT AFFECTING STATE GOVERNMENTAL PROCESSES

The FPPC does not dispute that the defendant tribe is a federally-recognized Indian tribe (Agua MPA p. 3) and that, as such, the defendant enjoys unique status in the state/federal system as a "domestic dependent nation." (Agua MPA pp. 2-3). *See Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831). The FPPC agrees that the defendant, by virtue of its unique status, has rights of tribal self-government assiduously protected by Congress. This case in no way implicates those rights nor threatens that unique status.

Tribes are not parties to the United States Constitution and are not states within the meaning of the Constitution. *See e.g. Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 191-92 (1989). It is equally clear that "Indian reservations do not partake of the full territorial sovereignty of States or foreign countries." *Washington v. Confederated Tribes of Colville Indian Reserve*, 447 U.S. 134, 165 n. 1 (1980) (Brennan, J. concurring in part and dissenting in part). Indian tribes are "prohibited from exercising . . . powers 'inconsistent with their status.'" *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978).

Tribal sovereignty is of a "unique and limited character[] [and] exists only at the sufferance of Congress and is subject to complete defeasance." *United States v. Wheeler,* 435 U.S. 313, 323 (1978). Congress' exercise of that power limits the reach of state authority, in order to protect the right of tribes to make their own laws and to be ruled by them. *See White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 142 (1980) (quoting from *Williams v. Lee,* 358 U.S. 217, 220 (1959)).

On the other hand, it is well-settled that off-reservation conduct of tribes, *absent a Congressional directive limiting state authority,* falls within the regulatory reach of states. *See Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 148 (1973); *see also, Boisclair v. Superior Court,* 51 Cal. 3d 1140, 1158 (1990) (if primary situs of acts is outside Indian territorial boundaries, tribal defendants have acted beyond their sovereign authority and are not protected by sovereign immunity).

The tribe's unsupportable assertion of unique authority to inject its influence into State government and elections without regard to state regulation implicates the sovereign interest of the State of California and its citizens, including the tribe's members, to protect the integrity of their elections and legislative processes. Neither the courts nor Congress have stripped the states of the power to protect their citizens from the corrupting influence of undisclosed contributions and lobbying by anyone, including Indian tribes. This court's failure to exercise jurisdiction would have the unwarranted effect of granting defendant unique power over California's political processes, a result precluded by the 10th Amendment.

II. THE MOTION TO QUASH NECESSARILY RAISES THE QUESTION OF SUBJECT MATTER, AS OPPOSED TO PERSONAL JURISDICTION

Defendant asserts that its motion raises the issue of personal jurisdiction and reserves the question of subject matter jurisdiction. (Agua MPA pp. 4, 13 n. 4). The FPPC agrees that the defendant may raise the question of its immunity from suit by a motion to quash or dismiss. However, the courts have analyzed the question of tribal immunity from suit as necessarily raising the question of subject matter

jurisdiction. *See Great Western Casinos, Inc. v. Morongo Band of Mission Indians,* 74 Cal. App. 4th 1407, 1417-18 (1999), *cert. denied* 531 U.S. 812 (2000); *see also, Boisclair v. Superior Court,* 51 Cal. 3d at 1144, n. 1; *Middletown Rancheria of Pomo Indians v. Workers' Comp. Appeals Bd.*, 60 Cal. App. 4th 1340, 1356 (1998); *Inland Casino Corp*. v. *Superior Court*, 8 Cal. App. 4th 770, 778 (1992).

Assuming sovereign immunity relates to the state court's subject matter rather than personal jurisdiction, it does not follow that the court is limited simply to analysis of the allegations of the complaint, as if defendant had demurred. *Western Casinos,* 74 Cal. App. 4th at 1417; *see also Boisclair v. Superior Court,* 51 Cal. 3d at 1158-59 (determination of the sovereign immunity issue required elaboration of facts underlying allegations of the complaint; no immunity for off-reservation acts beyond the scope of tribal authority); *Warburton/Butner v. Superior Court,* _____ Cal.App. 4th __ 2002 WL 31656098 (filed 11/26/02, Fourth Appellate District) (issuing mandate directing trial court to allow discovery on issue of subject matter jurisdiction).

This memorandum demonstrates that the court has subject matter jurisdiction over this dispute and should deny the motion to quash.

III. THE ACT, BY ITS TERMS, APPLIES TO THE TRIBE

By its terms the Act applies to tribes, as well as to all other "persons," including sovereigns. The Act defines "person" broadly as "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert." Gov't Code § 82047. At a minimum, a tribe is a group of persons acting in concert.

The most closely analogous appellate decision held that even the California Legislature is a "person" under the Act. *Fair Political Practices Commission v. Suitt,* 90 Cal. App. 3d 125 (1979). The court reasoned: 'The act undeniably was intended to deal comprehensively with the influence of money, *all money*, on

electoral and governmental processes." *Id.* at 132. The Legislature complained that treating it as a person under the Act would infringe on its sovereign activities. The court rejected the Legislature's contention, finding *no* sovereign interest in unscrutinized campaign contributions:

> [W]e do not see how bringing the glare of sunshine into the legislative process infringes on any legitimate sovereign interest.

Id. at 133. The same reasoning requires this court to find that the defendant is a "person" under the Act (defendant does not contend otherwise) and defendant has *no* sovereign interest in secret contributions to California candidates and ballot measures or secret payments for undisclosed lobbying activities.

In response to the argument that the Act was intended to apply only to contributions by private entities, the court held:

> But a very obvious reason for the absence of discussion of *public* campaign contributions is not that the act intended such to remain secret and undisclosed, but that contributions by governmental entities to political campaigns are per se illegal. . . . Hence the need to specify such a proscription in the Act would have been deemed unnecessary . . ..

Id. at 131-32. Contrary to the suggestion of the tribe (Agua MPA p. 2), the contributions of other state and local governments, whether lawful or unlawful, would also be subject to regulation by the Act under *Suitt*.

If the tribe were a foreign nation for purposes of the Act, as the tribe also suggests (Agua MPA p. 3), it would be barred altogether from making campaign contributions by the Federal Election Campaign Act (FECA). 2 U.S.C. § 441e. "Foreign nationals" include individuals, partnerships, associations, corporations, organizations, or any other combination of individuals. 2 U.S.C. § 611 (a). The FECA proscription applies to federal, state and local elections (*U.S. v. Kanchanalak,*

192 F. 3d 1037, 1047 (D.C. Cir. 1999)) and is incorporated into the Act by Government Code section 85320.

It follows that, under *Suitt*, the defendant tribe is subject to regulation by the Act, notwithstanding its sovereign attributes.

IV. THE TRIBE IS NOT IMMUNE FROM REGULATION OF ITS ACTIVITIES AS A CAMPAIGN DONOR AND LOBBYIST EMPLOYER

A. The Act Implicates No Area Of Traditional Tribal Authority

Obviously, there is no tradition of sovereignty or sovereign immunity with respect to tribal or tribe member involvement in state elections or legislative processes. Defendant does not contend otherwise.

The history of Indian involvement in California state government, to the extent that it informs the "backdrop" of tradition, is not one of which Americans generally, or Californians in particular, can be proud. Although the issue was debated at the California Constitutional Convention, the majority agreed only to permit the Legislature to adopt statutes enabling Indian suffrage by a two-thirds vote, in "special cases." Cal. Const. of 1850, Art. II, § 1. The Legislature never passed the enabling legislation. Even after adoption of the 15th Amendment to the United States Constitution, Indians who had not severed tribal ties had no right to vote and did not become citizens until the General Allotment Act of 1924. 43 Stat. 253 (codified at 8 U.S.C. § 1401 (b)).

This grant of full citizenship in 1924 was not envisioned in the era in which tribal sovereign immunity first described neat, non-intersecting spheres of federal/Indian and state jurisdiction. Nor was the current level of tribal political influence envisioned in 1924. As shown by the Declaration of Common Cause Executive Director Jim Knox, by the 1990's tribes and tribal members had become active both in voter-initiated and legislative lawmaking. The report attached to the Knox declaration and the Declaration of Dan Schek and attached exhibits show that the defendant tribe is a large and pervasive donor to state campaigns and initiatives,

including such initiatives as Proposition 34, which substantially reformed the Act, and Proposition 45, the term limits initiative, both of which fundamentally changed California governmental processes.

This evidence demonstrates the tribe's intent to affect voters and legislators beyond their reservation borders and to affect public policy beyond tribal interests *per se*. All of this activity is regulated by the Act. The only burden imposed on the tribe is the same burden imposed without discrimination on all other campaign donors and lobbyist employers.

To paraphrase *FPPC v. Suitt*, bringing the glare of sunshine into the processes by which the tribe seeks to influence State government infringes on no legitimate sovereign interest of the tribe. Tribes and tribe members are welcome to participate in State government according to the same rules and constraints on improper activities applicable to any other person governed by the Act. The Declarations of George Dunst (Wisconsin), Alan Plofsky and Jeffrey Garfield (Connecticut) and Jeanne Olson (Minnesota) show, however, that tribes enjoy no tradition of sovereign authority in this arena to support their unilateral undermining of the statutes protecting the integrity of state government.

B. California Has Substantial Sovereign Interests In The Integrity Of Its Government Reserved by the Tenth Amendment

The Act seeks to ensure that State and local government "serve the needs and respond to the wishes of all citizens equally, without regard to their wealth." Gov't Code § 81001(a). The Act finds, among other things, that lobbyists and organizations that make large contributions to campaigns "gain disproportionate influence over governmental decisions" (§ 81001(c)), that "existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate" (§ 81001(d)), and that "previous laws regulating political practices have suffered from inadequate enforcement" (§ 81001(h)). Purposes of the Act include (1) fully informing voters and inhibiting improper practices (§ 81002(a)) and providing

adequate enforcement mechanisms to public officials and private citizens so that the Act will be "vigorously enforced" (§ 81002(f)).

The very arguments upon which the defendant relies support California's right and interest as a sovereign to protect and preserve its own right of self-government. However, the State's interests, unlike tribal interests in self-government, are reserved to the states by the United States Constitution Article IV, section 4 (guaranteeing every state a republican form of government), through the 10th Amendment.

Under the 10th Amendment the states retained "a residuary and inviolable sovereignty." *See e.g. Printz v. United States,* 521 U.S. 898, 918-19 (1997). The states' power to determine the qualifications of their government officials is a power "reserved to the States under the Tenth Amendment and guaranteed to them by that provision of the Constitution under which the United States 'guarantee[s] to every State in the Union a Republican Form of Government.'" *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991).

In upholding a Missouri constitutional provision prescribing the mandatory retirement age for State judges, the Court in *Gregory* described the inherent sovereignty invoked by the FPPC in this action:

> [I]t is a decision of the most fundamental sort for a sovereign entity. Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign. "It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers . . . should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States.

Id. at 460. Subject only to limits imposed by the United States Constitution, the Court held that such power "inheres in the State by virtue of its obligation . . . 'to preserve the basic conception of a political community.'" [citations omitted]. *Id.*

More recently *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), held that *Buckley v. Valeo*, 424 U.S. 1 (1976), is authority for state limits on contributions to state political candidates. The Court recognized the state's legitimate and substantial "interests of preventing corruption and the appearance of it that flows from munificent campaign contributions." 528 U.S. at 390. *See also, e.g. Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973) (citing additional cases) (clear that preservation of the integrity of the electoral process is a legitimate and valid state goal); *Libertarian Party v. Eu*, 28 Cal. 3d 535, 542 (1980) (state interest in preserving integrity of elections is compelling).

The Declaration of Fair Political Practices Commission Chairman Karen Getman shows that the FPPC has demonstrated California's substantial interests protected by the campaign disclosure requirements of the Act as well as by those provisions requiring disclosure of lobbying activities. The United States District Court for the Eastern District of California made this finding in *California ProLife Council, Inc. v. Karen Getman et al*., No. CIV S-00-1698 FCD GGH. (Getman Dec. Ex. D). The ProLife Council's appeal is pending in the Ninth Circuit Court of Appeals. To support the court's finding of the Act's constitutionality, the FPPC produced evidence that voters can and do change their voting behavior when they are informed of the identities of the supporters or opponents of candidates or ballot measures. See Getman Dec. Ex. A and C (Declarations of David Binder, principal in David Binder Research with exhibits) and Ex. B (Declaration of Stephen Hopcraft, President and co-owner of Hopcraft Communications). Additional evidence showed information gleaned from publicly filed campaign finance disclosure reports is "absolutely critical" both to voters and the news media, particularly in sorting through claims and counter-claims about ballot measures.

The *ProLife Council* court found that the Ninth Circuit and the United States Supreme Court had recognized the State's interest in informing the electorate of campaign expenditures and found further that the evidence demonstrated the

interest is "particularly strong in California." By separate request for judicial notice the FPPC has requested that this court take judicial notice of the court's finding and of the evidence supporting the finding. *See also, Griset v. Fair Political Practices Com'n,* 8 Cal. 4th 851, 852 (1994) (recognizing state interest in assuring that the electorate has information regarding the source of political campaign funds).

Similarly, in *Institute of Governmental Advocates v. Fair Political Practices Com'n,* 164 F. Supp. 2d 1183, 1194-95 (E.D. Cal. 2001), the federal district court recognized that the state's legitimate interest in preventing corruption or the appearance of corruption of state elections, supported limitations on contributions by lobbyists. (Getman Dec. Ex. E). Earlier the California Supreme Court had upheld the lobbyist registration and reporting requirements of the Act. *Fair Political Practices Commission v. Superior Court,* 25 Cal. 3d 33, 46-49 (1979). The court found that the State had a "valid interest in determining the source of voices seeking to influence legislation and could reasonably require the professional lobbyist to identify himself and disclose his lobbying activities" as well as "disclosure of financial activities of persons engaged in political processes." *Id.* at 47 (citing *United States v. Harriss,* 347 U.S. 612, 625-626 (1954) and *Brown v. Superior Court* , 5 Cal. 3d 509, 519-523 (1971)).

The Declaration of Secretary of State Bill Jones and attached exhibits show that neutral, nonpartisan application of the Act's disclosure requirements is essential to accomplishing the Act's purposes. Further, the democratic process is grossly undermined when voters fail to receive full and timely information about contributions by major donors. The high public interest is indicated by the Cal-Access web site's receiving more than 500,000 "hits" in the months leading up to the March 2002 primary election, giving public access to some 35,000 electronic filings.

As a matter of fact and of law, there can be no doubt of the State's great and fundamental interest in protecting the integrity of its elections and legislative processes, subject only to limitation by the United States Constitution. These

interests define the very essence of state sovereignty. In this arena Congress has not attempted to limit state regulatory power over tribes and tribe members. Its attempt to do so would be subject to challenge under the 10th Amendment.

C. No Federal Statute Prohibits Regulation of Tribal Campaign Contributions Or Lobbying Activity

Most important for resolution of this motion, the *Gregory* Court held that "[I]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'[citations omitted]." *Id.* 501 U.S. at 460. No federal statute expressly or by implication prohibits state regulation of Indian contributions to state elections.

The Federal Election Campaign Act (FECA) regulates tribal contributions to federal elections and does not limit the authority of states to regulate tribal contributions to state elections. Indian tribes are subject to contribution limitations applicable to "persons," as defined by FECA ("an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons" but not including the federal government). 2 U.S.C. § 431 (11). *See* FEC Advisory Opinion, AO 2000-05 (May 15, 2000) (citing AO 1978-51, 1999-32, 1993-12). *See generally U.S. v. Kanchanalak,* 192 F. 3d 1037, 1043 (D.C. Cir. 1999) (FEC's interpretation of the Act should be accorded considerable deference).

According to the recent Congressional Research Service Report to Congress, under the recently enacted McCain Feingold Bipartisan Campaign Reform Act of 2002 (P.L. 107-155; Mar. 27, 2002) (BCRA), Indian tribes, like other "persons" will be subject to the new, increased contribution limits and will not be permitted to make soft money donations to political parties.

Since no federal statute, including FECA and BCRA, expressly attempts to limit State regulation in this area having no impact on tribal sovereign interests, the tribe's transactions are subject to regulation on the same basis as any other

"person" under the Act. *See Mescalero Apache Tribe v. Jones,* 411 U.S. at 148; *see also, Boisclair v. Superior Court,* 51 Cal. 3d at 1158.

V. THE COURT HAS JURISDICTION OVER THIS ENFORCEMENT ACTION

To date, the only court proceedings necessitated by tribal challenges to the FPPC's jurisdiction have been those required by the actions of the defendant tribe and by the Santa Rosa Indian Community of the Santa Rosa Rancheria (the defendant in Case no. 02AS04544 pending in this court). Other tribes have complied with the Act. Recently the Pachenga Band of Luiseno Indians submitted to the jurisdiction of the Act and stipulated to a violation. (Getman Dec. Ex. F)

The FPPC acknowledges that state authority to regulate does not answer the question whether an enforcement action may be brought against a tribe. *See e.g. Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe,* 498 U.S. 505, 513 (1991). However, *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998), the *only* Supreme Court decision directly addressing tribal immunity from suit for off-reservation conduct, says nothing about immunity from suit in connection with tribal injection into a state's political processes. In this instance, the State's sovereign interest in protecting the integrity of its elections necessarily includes the authority to enforce the Act against all major donors and lobbyist employers, including defendant Indian tribe.

The tribe should also acknowledge, as noted above, that the United States Supreme Court has not established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent. *California v. Cabazon Band of Mission Indians,* 480 U.S. at 214-15.

A. *Kiowa* Did Not Decide The Issue Presented To This Court

As stated at the outset, this is a case of first impression in California. No federal case has addressed the issues raised by this motion to quash. *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998) (Agua MPA pp. 13-14), is

the only United States Supreme Court decision directly addressing tribal immunity from suit for off-reservation conduct. The three dissenting justices recognized *Kiowa* is the *first* decision of the United States Supreme Court to state that the court-created doctrine of sovereign immunity from lawsuits applies to off-reservation activities or transactions. Justice Stevens' dissenting opinion states:

> Despite the broad language used in prior cases, it is quite wrong for the Court to suggest that it is merely following precedent, for we have simply never considered whether a tribe is immune from a suit that has no meaningful nexus to the tribe's land or its sovereign functions. Moreover, none of our opinions has attempted to set forth any reasoned explanation for a distinction between the States' power to regulate the off-reservation conduct of Indian tribes and the States' power to adjudicate disputes arising out of such off-reservation conduct.

Id. at 764. The dissenters cautioned that Court's judge-made law is unjust. "Governments, like individuals, should pay their debts and should be held accountable for their unlawful, injurious conduct." *Id.* at 765-66.

As broad as its holding is phrased, *Kiowa* says nothing about tribal immunity from suit in connection with tribal participation in a state's political processes or affecting sovereign interests reserved to the states by the 10th Amendment. *Kiowa*'s holding applies only to tribal transactions, whether governmental or commercial, whether on- or off-reservation, between tribes and *private* individuals or entities. The decision does not address tribal interactions with or injection directly into the affairs of state governments. No case applying *Kiowa*, including *Redding Rancheria,* has so extended its holding.

Kiowa extended court-created tribal immunity to "suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." *Id.* at 760. Justice Kennedy pointed out that the doctrine developed as a matter of federal common law "almost by accident" (*id*. at 756)

and expressed doubt as to the wisdom of the doctrine but deferred to Congress to alter the limits of the doctrine (*id.*).

More recently, *Nevada v. Hicks*, 533 U.S. 353, 362 (2001), not only protected the state of Nevada's ability to enforce its process on Indian lands but also disclaimed any right of tribes either to arrest the operations of state government at their will or to serve as havens for state law-breakers. The decision in *Hicks* supports the FPPC's view that the Supreme Court has not yet spoken directly on tribal sovereign immunity from suit where the claim of immunity relates to off-reservation activity interfering with the state's reserved powers of self-government.

On December 2, 2002, the Court granted certiorari to review the 9th Circuit decision that, seemingly contrary to *Hicks,* held that a county and its agents violated a tribe's sovereign immunity when they obtained and executed a search warrant against the tribe and tribal property related to an investigation of tribal welfare fraud. *Bishop Paiute Tribe v. County of Inyo,* 291 F. 3d 549 (9th Cir. 2002), certiorari granted by *Inyo County v. Paiute-Shoshone Indians of Bishop Community of Bishop Colony*, __ S.Ct. __ , 2002 WL 1969308, 71 USLW 3163 (U.S. Dec 02, 2002) (NO. 02-281) (Agua MPA at p. 7). The grant of certiorari further supports the FPPC's position that *Kiowa* does not limit state's rights to protect the integrity of state government processes.

The defendant tribe's assertion of power in this case to make unregulated contributions to California candidates, office holders and voter initiatives would give it the right to arrest the operation of the Act at its will and to serve as a money laundering haven for law-breakers. The Declaration of Bob Stern, the first General Counsel of the FPPC and co-author of the Act, shows that the tribe could completely undermine the Act, if it were not subject to enforcement of its provisions.

No Supreme Court decision supports this exercise of unregulated, potentially corrupting influence by *any* sovereign, group or Indian tribe over the elections and legislative processes of state government.

B. *Redding Rancheria* Is Not Dispositive Of This Motion

Redding Rancheria v. Superior Court, 88 Cal. App. 4th 384 (2001) (Agua MPA p. 14), followed *Kiowa* in a case involving off-reservation tortious conduct of a tribal casino employee at a tribe-sponsored function. The court pointed out that the tribe provided a mechanism to resolve civil suits by means of a hearing before the tribal council, but that the plaintiff refused to follow that procedure. Also, the plaintiff could sue individual tribal members in state court. The court found no federal law granting California jurisdiction over alleged off-reservation Indian torts. *Id.* at 387.

Notwithstanding the broad statements in *Redding Rancheria,* it relies in turn on *Kiowa*, which, the FPPC has demonstrated, did not reach the issue raised by this motion to quash. The FPPC relies on the California Supreme Court decision in *Boisclair* and the above-cited decisions of the United States Supreme Court for the proposition that the tribe cannot prevail in its motion absent a showing that Congress *expressly* limited the State's rights, reserved by the 10th Amendment, to protect the integrity of its elections by enforcing the Act. Absent a showing of a tradition of tribal sovereignty in this arena, Congressional intent to interfere with state sovereignty in the area of state elections, cannot be inferred, but must be express. *Gregory v. Ashcroft*, 501 U.S. at 460. Accordingly, *Redding Rancheria* is not on point and is not dispositive of the motion.

C. The Power To Regulate Necessarily Includes The Power To Enforce Statutes Protecting Integrity of State Elections

Where tribes have no tradition of sovereignty and where state sovereign interests are extraordinary, even in the absence of an express delegation to authority by Congress,

the courts have recognized that a necessary incident of the power to regulate is the power to enforce. This general proposition has been recognized both as an aspect of Indian and of state sovereignty.

Thus, for example, in *Babbitt Ford, Inc. v. Navajo Indian Tribe,* 710 F.2d 587 (9th Cir. 1983), cert. denied 466 U.S. 926 (1984), an Indian tribe was found to have authority to exercise civil jurisdiction over non-Indians conducting vehicle repossessions on reservation land. Because the regulations governing the conduct of non-Indians were a legitimate exercise of the tribe's inherent powers, civil jurisdiction to enforce the regulations was a "necessary exercise of tribal self-government." *Id.* at 598.

This same principle has been applied, even in the absence of express Congressional authority, where states have authority to regulate tribal conduct. *See Fort Belknap Indian Community of Fort Belknap Indian Reservation v. Mazurek,* 43 F.3d 428 (9th Cir. 1994), *cert. denied* 516 U.S. 806 (1995). *Fort Belknap* dealt with regulation of liquor laws *in* Indian Country. Since there is no tradition of Indian sovereignty in this arena, "little if any weight" would be accorded to asserted interests in tribal sovereignty. *Id.* at 433. The court in *Fort Belknap* reasoned that, without the power to prosecute violations, the state authority to regulate would be meaningless and the state's high interest unprotected. *Id.* at 434.

The same reasoning applies to the "unusual subject" of inherent state authority to govern and protect the integrity of its elections and legislative processes. Enforcement of the Act would infringe *no* aspect of tribal self-government. There is *no* traditional backdrop of sovereign authority and the state's interests could not be higher: the Article IV, section 4 power, reserved to the states by the 10th Amendment, to supervise their own elections, subject only to constitutional limitation, is the essence of state sovereignty.

If California were without authority to enforce its regulations, the tribe could corrupt state government with impunity, as shown by the Declaration of Bob Stern.

No precedent supports the result advocated by the tribe. Unlike the situations in *Kiowa* and *Redding Rancheria*, involving tribal transactions with private individuals or entities, where tribal courts exist as an alternative forum for dispute resolution, there is no alternative forum and no remedy available, unless the Act is enforced in state court. As in *Fort Belknap*, by necessity the right to regulate, in this case involving the State's reserved powers of self-government, includes the right to enforce in state court. Because of the 10th Amendment reserved powers of the State, the lack of express Congressional authority, as in *Fort Belknap*, is not dispositive.

D. "Courtesy" Compliance Is Not A Viable Alternative To Enforcement

Defendant's introduction suggests that the tribe provides alternative reports that should be accepted in lieu of compliance with the Act. The tribe makes various statements unsupported by evidence (Agua MPA at p. 1), with which the FPPC does not agree. The evidence filed with this opposition shows that *not* all required donor disclosures are available by combing through the reports of recipients. Combing through recipient reports does *not* give a full or reliable picture of a donor's activities and is costly and time-consuming. The defendant's last minute contributions have *not* been disclosed timely and lobbying interests have *not* been either fully or timely disclosed. And, obviously, sending the public searching the internet for alternative "courtesy" postings by potential donors and lobbyist employers does *not* equate with looking at a single, publicly mandated and maintained site. Such postings by defendant tribe – which apparently began after the FPPC filed this enforcement action – are entirely volitional and are not subject to audit or confirmation.

The Declaration of Jim Knox shows that it is very difficult, expensive and time-consuming to try to derive the influence of any major donor by combing

through the reports of recipients. The Declaration of Mark Krausse, Executive Director of the Fair Political Practices Commission, shows that it is difficult, if not impossible, to track lobbying efforts without lobbyist employer reports. Indeed, of the 37 measures the defendant lobbied in the most recent legislative session, its position was listed in the bill analysis of only one, SB 1828 (Burton) (¶ 10).

The Declaration of Al Herndon shows that dual filing is essential to the FPPC's ability to audit records for compliance by donors *and* recipients. (¶ 5).

The Declaration of Bob Stern, President of the Center for Governmental Studies, former general counsel of the FPPC and principal co-author of Proposition 9, which enacted the Act, shows that basic tenets of the Act were that it should strengthen the disclosure requirements (¶ 5) and should apply to *all* contributors (¶ 8). When, after *Buckley v. Valeo,* the FPPC proposed a regulation to exempt certain minority candidates (¶ 9), the Legislature swiftly passed AB 453 prohibiting the FPPC from exempting any person from the Act's requirements (¶¶ 10-11). Gov't Code § 84400. Evidence supporting Stern's assertion that the Act is intended to apply to all contributors includes the FPPC's amicus brief in *Buckley v. Valeo* (Ex. A), the Proposition 9 ballot argument (Ex. B), the Legislative Counsel Digest to AB 453 (Ex. C), a *Los Angeles Times* editorial ("Coverup for Contributions") (Ex. D), and the letter transmitting the bill to Governor Brown requesting his signature (Ex. E).

The Declaration of Bob Stern shows that keys to the success of the Act have been its requirements of full and timely disclosure with "double reporting" (¶ 13) and vigorous enforcement (¶ 14). The tribe's conduct threatens to completely undermine the Act. The tribe could fund independent expenditure campaigns without revealing the source of funds. It could serve as a conduit for others who seek secretly to influence state elections. (¶¶ 16, 17). It could make compliance auditing impossible.

///

E. Other States Enforce Their Campaign Contribution Laws Against Tribes And Have State Court Jurisdiction

Further demonstrating the lack of a basis for assertion of tribal sovereign immunity, the evidence in support of this opposition shows that several states with tribes operating large casinos enforce campaign contribution regulations against the tribes participating in their state politics. The attached evidence is by way of example only. More similar evidence could be adduced, if there were additional time. The FPPC has located no state (or federal) decision that holds that state courts do not have jurisdiction over comparable enforcement actions.

The Declaration of Jeanne Olson, Executive Director of the Minnesota Campaign Finance and Public Disclosure Board, shows that only two tribes have refused to comply with that state's disclosure and reporting laws. Both cases required legal action and in both cases the Minnesota courts found that they had subject matter jurisdiction. The declaration attaches copies of the two court decisions.

In *Minnesota State Ethical Practices Board v. Red Lake DFL Committee,* 303 N.W. 2d 54 (Minn. Sup. Ct. 1981) (Olson Dec. Ex. A), the Minnesota Supreme Court held that a tribal committee was subject to registration and disclosure laws, when the committee paid for political advertisements disseminated outside the reservation endorsing candidates for state and federal office. The trial court had ound subject matter jurisdiction and had held the committee in contempt. The committee appealed and the supreme court affirmed. The court recognized the special status of the Red Lake Band of Indians, that the federal government had not transferred its exclusive jurisdiction to the state and that, consequently, the band enjoyed unique rights of self-government. *Id* at 55. The court further noted that it had recognized instances where the state lacked authority to govern the affairs of band members within the reservation. *Id.* at 56.

The court rejected the defendant's argument that the state lacked jurisdiction to impose the requirements of its ethical practices act on the tribal committee. The

evidence showed that the committee intended to influence voters living outside the reservation. *Id.* The court concluded that tribal activities calculated to influence voters outside the reservation were a proper concern of the state and subject to its reasonable regulation. It further found that the defendant committee had not demonstrated that such regulation would have any adverse effect on tribal self-government. *Id.*

> As plaintiff points out, the Red Lake Band participates in the election process, has the same interest as other voters in the integrity of that process, and has a corresponding obligation to comply with state laws which govern that process and guard its integrity. Nor is the defendant Committee being asked to do any more than other organizations outside the state which are required to comply with Chapter 10A when they similarly seek to influence voters in the state.
>
> *Id.*

In *Shakopee Mdewakanton Sioux (Dakota) Community v. Minnesota Campaign Finance and Public Disclosure Board,* 586 N.W.2d 406 (Minn. Ct. App. 1998) (Olson Dec. Ex. B), the tribe made a direct contribution to a political party without making disclosures required of unregistered associations. The tribe sought to enjoin the Board's order that it make disclosures required by the act. The court of appeal upheld the lower court's denial of the requested injunction and specifically rejected the contention that the Board did not have authority over the tribe. *Id.* at 412.

The Declaration of Jeffrey Garfield, Executive Director of the Connecticut Elections Enforcement Commission, shows that the tribes operating gambling casinos in that state have not contested the Commission's jurisdiction and have fully complied with the state's disclosure laws. (¶¶ 5-7). The Declaration of Alan Plofsky, Executive Director and General Counsel of the Connecticut State Ethics Commission, shows that the same two tribes comply with the state's laws governing lobbyist activities. (¶¶ 4-5). Further, the Mashantucket Pequot tribe and its Foxwood

Casino settled an enforcement action and paid civil penalties for violating the gift limits and reporting requirements of the State Ethics Code. The tribe did not contest the state's authority to enforce the Ethics Code. (¶ 7, Ex C).

The Declaration of George Dunst, Legal Counsel for the Wisconsin Elections Board, establishes that the states' politically active tribes comply with the state's campaign finance disclosure laws. (¶ 4). Recently the Oneida Nation Tribe paid a forfeiture fine of $1,010 in connection with minor violations. (¶ 5). Attached to the Dunst Declaration are the Board's letters informing the tribe that it is a "committee" under Wisconsin's law (Ex. A and B).

These states and the tribes whose members are citizens of these states recognize that there is no tradition of tribal sovereign immunity with respect to involvement in state elections, that disclosure laws are integral to the integrity of state government, that the protected interests are shared by tribes with all other state voters, and that there is no tribal sovereign interest in undermining laws shedding light on contributions made to influence state elections and legislative processes.

F. The Defendant's Remaining Authorities Are Inapposite

Other than *Kiowa* (and *Redding Rancheria*), the cases cited by defendant tribe each relate to the question of state court jurisdiction over disputes having to do with on-reservation activity implicating sovereign rights of self-government.

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) (Agua MPA p. 4) dealt with tribal membership. *Pan American Co. v. Sycuan Band of Mission Indians,* 884 F. 2d 416, 418 (9th Cir. 1989) (Agua MPA p. 4), dealt with enforcement of a bingo ordinance enacted by the tribe. *McClendon v. U.S.,* 885 F. 2d 627, 629 (9th Cir. 1989) (Agua MPA p. 5), involved a dispute over a lease agreement, which, in turn, related to a dispute over ownership of lands claimed on behalf of the tribe. *Chemehuevi Indian Tribe v. California State Bd. of Equalization,* 474 U.S. 9 (1985) (per curiam) (Agua MPA p. 5), dealt with on-reservation sales of cigarettes to non-

Indian purchasers. In each case the issue concerned traditional areas of tribal authority and impacted rights of tribal self-government.

The decisions cited by the defendant on pages 5 and 6 also all involve on-reservation activities and each precedes *Kiowa*. *Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe,* 498 U.S. 505 (1991) (Agua MPA p. 5), involved a valid state tax on on-reservation sales of cigarettes. Although the Court held that the state's counterclaim was barred, it decided the merits. The Court analyzed federal statutes relating to tax assessments on tribes and concluded:

> Congress has consistently reiterated its approval of the immunity doctrine. See, *e.g.,* Indian Financing Act of 1974, 88 Stat. 77, 25 U.S.C. 1451 *et seq.,* and the Indian Self-Determination and Education Assistance Act, 88 Stat. 2203, 25 U.S.C. 450 *et seq*. These Acts reflect Congress' desire to promote the "goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." . . . *Under these circumstances*, we are not disposed to modify the long-established principle of tribal sovereign immunity.
>
> *Id.* at 510 (emphasis added).

Justice Stevens' concurring opinion emphasized that the Court's holding *rejected* the argument that the tribe was completely immune from legal process:

> By addressing the substance of the tax commission's claim for prospective injunctive relief against the Tribe, the Court today recognizes that a tribe's sovereign immunity from actions seeking money damages does not necessarily extend to actions seeking equitable relief.

Id. at 515-16.

California v. Quechan Indian Tribe, 595 F. 2d 1153 (9th Cir. 1979) (Agua MPA p. 5), dealt with enforcement of fish and game laws *on* a reservation. *Middletown Rancheria of Pomo Indians v. Workers' Compensation Appeals Board,* 60 Cal. App. 4th 1340 (1998) (Agua MPA p. 5), dealt with enforcement of workers

compensation laws against a tribal commercial entity (a casino) operated *on* a reservation. *Bishop Paiute Tribe v. County of Inyo* (Agua MPA p. 7), as discussed above, involved execution of a search warrant *on* reservation property. The United States Supreme Court has granted certiorari and will, once again, examine the limits of tribal sovereignty where the tribal assertion of sovereignty allows it to become a haven for state lawbreakers (specifically, a welfare fraud ring).

None of these cases addressed off-reservation activities interfering with or undermining powers of self-government reserved to the states through Article IV, section 4 by the 10th Amendment to the United States Constitution.

VI. ISSUE PRECLUSION IS NOT DISPOSITIVE OF THIS MOTION

Defendant's reliance on the judgment of which it has requested that the court take judicial notice is puzzling, since the judgment was reversed in full by a reported court of appeal decision, which the defendant fails to cite: *People ex rel. Lungren v. Community Redevelopment Agency*, 56 Cal. App. 4th 868 (1997). The attorney general appealed from the judgment dismissing his complaint against the Community Redevelopment Agency (Agency). The complaint challenged the actions of the Agency in entering into a contract with the tribe under which the Agency would transfer real property owned or acquired by it to the tribe and in exchange the tribe would give the Agency a share of the gambling proceeds. The trial court found that the tribe was an indispensable party to the action but could not be joined because of its sovereign immunity. On the Agency's motion the court dismissed the complaint. The court of appeal concluded that the tribe was *not* an indispensable party to the action and *reversed*. *Id.* at 870.

The judgment in *Lungren* has no bearing on resolution of the issues presented by the tribe's motion to quash in this action. First, the tribe was not an indispensable or even necessary party to the action. Second, the issue decided in the prior action clearly was not identical. The court of appeal decision shows that the issue – necessity of joining the tribe in an action challenging a state agency's

authority to contract with tribe – was entirely dissimilar to the issue presented in this case.

Collateral estoppel or issue preclusion requires proof that the particular issue was actually litigated and necessarily decided in the prior action. *Rohrbasser v. Lederer,* 179 Cal. App. 3d 290, 297 (1986) (Agua MPA at p. 10) (denying collateral estoppel effect where judgment debtor not given full opportunity to litigate issue in prior action). This the tribe has not done. Also, California courts recognize a public policy exception to issue preclusion that supports this litigation. *See Kopp v. FPPC*, 11 Cal. 4th 607, 621-22 (1995) (preclusion inoperative; when the issue is a question of law rather than of fact, prior determination not conclusive if injustice would result or if the public interest requires relitigation).

Most important, as these points and authorities have shown, the issue of state jurisdiction over a tribe and its members is determined on a case-by-case basis. Each case requires analysis of the pertinent interests of the state and the tribe. There is no *per se* rule against exercise of state jurisdiction over tribes and tribe members. *California v. Cabazon Band of Mission Indians,* 480 U.S. at 214-15. The tribe's citation to *Bishop Piaute Tribe v. County of Inyo,* 291 F. 3d 549 (9th Cir. 2002) (Agua MPA p. 7) suggests that, not withstanding the statement in *Cabazon*, there is a *per se* rule when a state asserts jurisdiction over a tribe, as opposed to individual members. As noted above, the United States Supreme Court granted certiorari in *Bishop Paiute* on December 2, 2002.

The court should reject the contention that the issue presented by the motion to quash has previously been determined or that, as a matter of law, a *per se* rule applies. Unlike the plaintiff in *Bishop Paiute,* the FPPC has presented ample evidence and authority to support state court jurisdiction over enforcement of State laws regulating tribal campaign contributions to State elections and employment of advocates lobbying State legislators. The FPPC has shown that no case has decided whether a tribe is immune from state enforcement of its campaign contribution laws

or other laws protecting the state's sovereign interest in the integrity of its state elections and legislative processes. At least one state, Minnesota, has found that, though a tribe may be immune from other suits, it is not immune from enforcement of a statute analogous to the Act.

VII. CONCLUSION

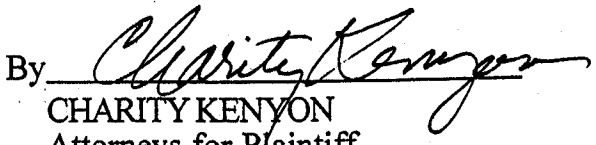
No precedent holds or suggests that the tribe may inject itself in the State's election and legislative processes, except on the same basis as any other person or association. This action implicates no tribal sovereign interest and Congress has not preempted state authority in this area. Rather, the paramount interest here is that of the State in protecting the integrity of its governmental processes - a fundamental right of state sovereignty protected by Art. IV, sec. 4 through the 10th Amendment. This court should deny defendant tribe's motion to quash.

Dated: December 9, 2002

Respectfully submitted,

STEVEN BENITO RUSSO
LUISA MENCHACA
WILLIAM L. WILLIAMS
HOLLY B. ARMSTRONG
FAIR POLITICAL PRACTICES COMMISSION

RIEGELS CAMPOS & KENYON LLP

By 
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FAIR POLITICAL PRACTICES COMMISSION

PROOF OF SERVICE

Sacramento County Superior Court
Case No. 02AS04545
Fair Political Practices Commission
v.
Agua Caliente Band of Cahuilla Indians, and Does I-XX

I, Kelly L. Winsor, declare under penalty of perjury that:

I am over 18 years of age, and I am not a party to the within action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. I am employed in Sacramento, California.

On December 10, 2002, I caused to be served a true copy of the following document(s):

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH; REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION TO QUASH; DECLARATION OF SECRETARY OF STATE BILL JONES IN OPPOSITION TO MOTION TO QUASH; DECLARATION OF KAREN GETMAN IN OPPOSITION TO MOTION TO QUASH SERVICE AND IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE (Evid. Code § 452(d)); DECLARATION OF MARK KRAUSSE IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; DECLARATION OF ALAN HERNDON IN OPPOSITION TO MOTION TO QUASH; DECLARATION OF DAN SCHEK IN OPPOSITION TO MOTION TO QUASH; DECLARATION OF GEORGE DUNST IN OPPOSITION TO MOTION TO QUASH SERVICE; DECLARATION OF JEFFREY B. GARFIELD IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; DECLARATION OF JEANNE OLSON IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; DECLARATION OF ROBERT M. STERN IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; DECLARATION OF ALAN PFLOFSKY IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; DECLARATION OF JAMES K. KNOX IN SUPPORT OF OPPOSITION TO MOTION TO QUASH; NOTICE OF LODGMENT OF COPIES OF FEDERAL AND STATE CASES AND OTHER AUTHORITIES CITED BY PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH

____ By personal delivery of a true copy to the person(s) at the address(es) set forth below.

XXX By United States Postal Service Express Mail to the person(s) at the address(es) set forth below.

____ By placing a true copy, in a sealed envelope, with postage fully prepaid, in the United States Post Office mail at Sacramento, California, addressed to the person(s) at the address(es) set forth below. I am familiar with this agency's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mail box after the close of the business day.

___ By transmitting a true copy via facsimile to the person(s) at the facsimile number(s) set forth below.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on December 10, 2002.

Kelly L. Winsor

Kelly L. Winsor